

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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LARYSSA SHAINBERG and  
ERSTE WARSHAUER SHUL,

Plaintiffs,

Docket No. 07 CV 555 (NRB)

-against-  
ERWIN HAAS and EH&P INVESTMENTS AG,

Defendants.

**ANSWER TO THE  
AMENDED COMPLAINT**

-----X  
Defendants Erwin Haas ("Haas") and EH&P Investments AG ("EHP") appearing by their attorneys Gusrae, Kaplan, Bruno & Nusbaum PLLC hereby submit their Answer to the above-captioned Amended Complaint, as follows:

**THE PARTIES**

- 1) Deny knowledge and/or information sufficient to form a belief as to the truth of the allegations contained in paragraph no. "1" of the Amended Complaint.
- 2) Admit the allegations contained in paragraph no. "2" of the Amended Complaint.
- 3) Admit the allegations contained in paragraph no. "3" of the Amended Complaint.

**JURISDICTION**

- 4) Deny the allegations contained in paragraph no. "4" of the Amended Complaint, except admit that none of the Defendants reside or are domiciled in the United States.

- 5) Deny the allegations contained in paragraph no. "5" of the Amended Complaint.

**FACTS COMMON TO ALL COUNTS**

- 6) Deny the allegations contained in paragraph no. "6" of the Amended Complaint.
- 7) Deny the allegations contained in paragraph no. "7" of the Amended Complaint.

- 8) Deny the allegations contained in paragraph no. "8" of the Amended Complaint.
- 9) Deny the allegations contained in paragraph no. "9" of the Amended Complaint.
- 10) Deny the allegations contained in paragraph no. "10" of the Amended Complaint.
- 11) Deny the allegations contained in paragraph no. "11" of the Amended Complaint.
- 12) Deny the allegations contained in paragraph no. "12" of the Amended Complaint.

COUNT 1  
(Fraud)

- 13) Repeat and reallege the above paragraphs as if fully stated herein.
- 14) Deny the allegations contained in paragraph no. "14" of the Amended Complaint.

COUNT 2  
(Conversion)

- 15) Repeat and reallege the above paragraphs as if fully stated herein.
- 16) Deny the allegations contained in paragraph no. "16" of the Amended Complaint.

COUNT 3  
(False Swearing)

- 17) Repeat and reallege the above paragraphs as if fully stated herein.
- 18) Deny the allegations contained in paragraph no. "18" of the Amended Complaint.

COUNT 4  
(Breach of Contract)

- 19) Repeat and reallege the above paragraphs as if fully stated herein.
- 20) Deny the allegations contained in paragraph no. "20" of the Amended Complaint.
- 21) Deny the allegations contained in paragraph no. "21" of the Amended Complaint.

COUNT 5  
(Breach of Fiduciary Duty)

- 22) Repeat and reallege the above paragraphs as if fully stated herein.
- 23) Deny the allegations contained in paragraph no. "23" of the Amended Complaint.

- 24) Deny the allegations contained in paragraph no. "24" of the Amended Complaint.

AFFIRMATIVE DEFENSES

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

- 25) The Plaintiff Laryssa Shainberg on or about March 6, 2008 and subsequent to the filing of the Amended Complaint discontinued the action with prejudice.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

- 26) The Count lacks personal jurisdiction over the Defendants, as Defendant Haas is a domiciliary of Switzerland who resides in Switzerland and EHP is a foreign corporate entity, located in Switzerland. Neither of the Defendants reside or maintain a place of business in the United States and neither of the Defendants transacted any business with the Plaintiffs, let alone transacted business with the Plaintiffs in the United States.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

- 27) Forum Non Conveniens.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

- 28) The Count lacks subject matter jurisdiction.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

- 29) The Amended Complaint fails to state a cause of action against the Defendants.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

- 30) The Plaintiffs lack privity with the Defendants.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

- 31) The Plaintiff Laryssa Shainberg did not seek the Court's permission prior to filing the Amended Complaint.

AS AND FOR A EIGHTH AFFIRMATIVE DEFENSE

- 32) Plaintiffs' claims are barred by the equitable doctrine of unclean hands.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

- 33) Plaintiffs' claims are barred by the equitable doctrine of estoppel.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

- 34) Plaintiffs' claims are barred by the equitable doctrine of laches.

AS AND FOR A ELEVENTH AFFIRMATIVE DEFENSE

- 35) Plaintiffs' claims are barred by the equitable doctrine of waiver.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE

- 36) Plaintiffs' claims are barred due to their illegal acts and conduct.

AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE

- 37) Plaintiffs' claims against the Defendants are barred due to impossibility of performance.

WHEREFORE, Defendants Haas and EHP respectfully request that the Court enter judgment dismissing Plaintiffs' Amended Complaint in its entirety, and that the Defendants be

awarded attorneys fees, costs and such other and further relief as the Court deems to be just, equitable and proper.

Dated: New York, New York  
May /3<sup>rd</sup>, 2008

GUSRAE KAPLAN BRUNO  
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